

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Richard Muñoz	)	File No. EB-02-TP-114
2132 Shadowlawn Drive	)	NAL/Acct. No. 200232700011
Naples, Florida 34112	)	FRN 0007-0496-61
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 31, 2003**

**Released: April 2, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“Order”), we grant in part and deny in part the petition for reconsideration filed on November 1, 2002, by Richard Muñoz (“Mr. Muñoz”). Mr. Muñoz seeks reconsideration of the *Forfeiture Order*<sup>1</sup> in which the Chief, Enforcement Bureau (“Bureau”), found him liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>2</sup> The noted violation involves Mr. Muñoz’s operation of a radio station on 105.1 MHz without Commission authorization. For the reasons discussed below, we reduce the monetary forfeiture to \$2,000.

**II. BACKGROUND**

2. On April 20, 2002, agents from the Commission’s Tampa, Florida, District Office (“Tampa Office”) investigated a complaint alleging that an unlicensed radio station was transmitting on frequency 105.1 MHz in the Naples, Florida area. A search of Commission records showed that there was no FM radio station licensed on 105.1 MHz in Naples, Florida. Using a mobile direction finding vehicle, the agents detected an FM radio station operating on 105.1 MHz and traced the station’s signal to the Tree of Life Church at 2132 Shadowlawn Drive, Naples, Florida. The agents determined through field strength measurements that the station’s field strength was 90,198 times greater than the permissible level<sup>3</sup> for a non-licensed low-power radio transmitter and that, therefore, the station required a license to operate.

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<sup>1</sup> 17 FCC Rcd 21132 (Enf. Bur. 2002).

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> Under Section 15.239 of the Commission’s Rules (“Rules”), 47 C.F.R. § 15.239, non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 µV/m at three meters.

3. The agents immediately inspected the station and found that the transmitting equipment was in operation. During the inspection, the agents interviewed Mr. Muñoz, who admitted that he operated the station. When asked whether he had a license for the station, Mr. Muñoz replied that a friend had submitted an application to the FCC and advised him that he could operate the station while the paperwork was being processed. The agents informed Mr. Muñoz that he could not operate the station without a license, directed him to terminate the unlicensed operation and hand delivered a warning letter to Mr. Muñoz. The warning letter advised Mr. Muñoz that operation of a radio station without a license violates Section 301 of the Act, warned him to cease operation of the unlicensed station immediately, and set forth the penalties for unauthorized operation of a radio station.

4. On April 30, 2002, the Tampa Office received a complaint alleging that an unlicensed FM station operating on 105.1 MHz in Naples, Florida, was causing interference to the reception of an authorized FM broadcast station. On May 14, 2002, using a mobile direction finding vehicle, agents from the Tampa Office again detected an FM radio station operating on 105.1 MHz and traced the station to the Tree of Life Church at 2132 Shadowlawn Drive, Naples, Florida. The agents determined through field strength measurements that the station's field strength was 82,587 times greater than the permissible level for a non-licensed low-power radio transmitter and that, therefore, the station required a license to operate.

5. On May 17, 2002, the Tampa Office issued a warning letter to Andrew DeLong, head Mr. of the Tree of Life Church. On May 24, 2002, the Tampa Office received a letter from Mr. DeLong stating that the Tree of Life Church leased space for the radio station to Mr. Muñoz and had no control over the operation of the station. In addition, Mr. DeLong stated that, following the May 17, 2002, warning letter, he spoke with Mr. Muñoz and Mr. Muñoz shut down the radio station.

6. On June 5, 2002, the Tampa Office issued a *NAL*<sup>4</sup> for a \$10,000 forfeiture to Richard Muñoz for operating a radio station without a license, in willful and repeated violation of Section 301 of the Act. Mr. Muñoz responded to the *NAL* seeking cancellation of the proposed forfeiture. On October 24, 2002, the Bureau released a *Forfeiture Order* affirming the *NAL*. In response to the *Forfeiture Order*, Mr. Muñoz admits that he operated the unlicensed station on 105.1 MHz and pledges that there will be no recurrence. He requests cancellation of the forfeiture on basis of contrition, his reliance on misleading advice from another unlicensed religious broadcaster and his inability to pay the forfeiture. To support his inability to pay claim, Mr. Muñoz submits copies of his 1999, 2000 and 2001 federal income tax returns.

### III. DISCUSSION

7. Mr. Muñoz's pledge not to repeat his violations of Section 301 and his contrition do not mitigate his violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."<sup>5</sup>

8. Mr. Muñoz argues that his violations resulted from his reliance on misleading advice. Mr. Muñoz made a similar argument in his response to the *NAL*.<sup>6</sup> We rejected that argument in the *Forfeiture*

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<sup>4</sup> *Richard Muñoz*, NAL Acct. No. 200232700011 (Enf. Bur., Tampa Office, rel. June 5, 2002).

<sup>5</sup> See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21871 (2002).

<sup>6</sup> 17 FCC Rcd 21132, 21134 (Enf. Bur. 2002).

*Order* because after the inspection on April 20, 2002, Mr. Muñoz knew that his station's operation was unauthorized but despite the received warning he continued to operate the unlicensed station. He provides nothing new to support his support here, and we again reject it as a basis for cancellation of the forfeiture. We affirm the imposition of a forfeiture for Mr. Muñoz's unlicensed operation. However, we find that, on the basis of the financial information provided by Mr. Muñoz, the forfeiture should be reduced to \$2,000.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>7</sup> and Section 1.106 of the Rules,<sup>8</sup> Mr. Muñoz's petition for reconsideration of the October 24, 2002, *Forfeiture Order* **IS GRANTED** to the extent that the monetary forfeiture **IS REDUCED** to \$2,000 and **IS DENIED** in all other respects.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>9</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232700011 and FRN 0007-0496-61. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>10</sup>

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Richard Muñoz, 2132 Shadowlawn Drive, Naples, Florida 34112, and to his attorney, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>7</sup> 47 U.S.C. § 405.

<sup>8</sup> 47 C.F.R. § 1.106

<sup>9</sup> 47 U.S.C. § 504(a).

<sup>10</sup> See 47 C.F.R. § 1.1914.